

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED**OCT 29 1998**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Station)
(Shelby and Dutton, Montana))

MM Docket No. _____
RM- _____

To: Chief, Allocations Branch,
Policy and Rules Division,
Mass Media Bureau

PETITION FOR RULE MAKING

Shelby Media Association ("SMA"), permittee of Station KBJF(FM),¹ Channel 250C, Shelby, Montana, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to move Channel 250C from Shelby, Montana to Dutton, Montana, and to modify KBJF's construction permit accordingly. As shown below, SMA's proposal would result in a preferential arrangement of FM allotments and should be adopted.

I. PRELIMINARY MATTERS

SMA is filing this Petition pursuant to Section 1.420(i) of the Rules, which allows the Commission to modify an FM or TV station's authorization to specify a new community of

¹ An application to change the call sign of the station to KLHK will soon be filed.

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license without affording other parties an opportunity to file competing expressions of interest, provided the proposed allotment is mutually exclusive with the station's present assignment. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community M&O").

As indicated in the Technical Exhibit attached hereto as Exhibit 1, reallocation of Channel 250C to Dutton would not necessarily require a change in the current KBJF transmitter site. Therefore, the allotment of Channel 250C to Dutton obviously is mutually exclusive with allotment of the same channel to Shelby. Accordingly, the Commission may reallocate Channel 250C to Dutton without providing an opportunity for other parties to file construction permit applications for the Dutton allotment.

Using as a reference point either the current transmitter site of Station KBJF (48-30-22 NL, 111-51-30 WL) or the coordinates for Dutton as derived from the listing in the Index to the National Atlas of the United States (47-51-00 NL, 111-42-48 WL), the proposed allotment easily satisfies the minimum distance separation requirements of Section 73.202(b) of the Rules.

II. SMA'S PROPOSAL MEETS THE FCC'S PREREQUISITES AND ADVANCES FM ALLOTMENT PRIORITIES

The two key prerequisites to a city-of-license change of an FM station are: (1) the former community shall not be deprived of its only existing local aural transmission service; and (2) the modification shall result in a net service benefit to the communities involved (i.e., "the plan would result in a preferential arrangement of allotments"). Change of Community R&O, 4 FCC Rcd at 4874. In evaluating the net service benefits, the Commission applies its well-established FM allotment priorities, which are ranked in the following order: (1) first full-time aural reception service; (2) second full-time aural reception service; (3) first local transmission service; and (4) other public interest factors, with priorities (2) and (3) being given equal weight. Id.

1. First Prerequisite: **Reallotment of KBJF to Dutton will Not** **Deprive Shelby of Local Broadcast Service**

KBJC is not Shelby's only broadcast station. Two others, KZIN(FM) and KSEN(AM), are licensed to that community. KZIN is a Class C1 station operating with 100 kw at an antenna height of 168 meters above average terrain. KSEN operates on 1150 kHz with 5 kw day and night.

Moreover, KBJF is not yet in operation. The Commission has held that because the public does not rely on the service of an unbuilt station, realloting its channel does not constitute a deprivation of an aural service to the previously specified community. E.g., Hague, New York,

13 FCC Rcd 7271 (Chief, Allocations Branch 1998); Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (Chief, Allocations Branch 1995).

2. Second Prerequisite:

**The Relocation of Channel 250C to Dutton, Montana,
Constitutes a Preferential Arrangement of Allotments**

a. The First Two FM Allotment Priorities are Inapplicable

As indicated above, reallocation of Channel 250C to Dutton, Montana, does not necessarily entail a change in the transmitter site of Station KBJF. Therefore, adoption of the proposed reallocation will not lead, ipso facto, to the addition or removal of a reception service to the area. For that reason, the first two FM allotment priorities (first reception service and second reception service) are inapplicable under the circumstances.

**b. The Third Allotment Priority, First Local Transmission
Service, Favors Adoption of SMA's Proposal**

The third allotment priority, however, is applicable. SMA's proposal to relocate Channel 250C will provide Dutton, Montana, with its first local transmission service.

Dutton is a "community" under the Commission's criteria. Dutton, known as the "Wheat Capital of Montana," was established in 1909. The community is incorporated and has a "mayor and council" form of government. Its population is 396 (Census Bureau estimate, July 1996). As detailed below, Dutton has all the normal attributes of a small farming town. It clearly possesses the requisite social, economic and cultural components that are commonly associated

with community status. E.g., Semora, North Carolina, 5 FCC Rcd 934 (1990). Moreover, the fact Dutton is incorporated is sufficient to establish it as a community for channel allotment purposes. E.g., Greenwood, South Carolina, 2 FCC Rcd 3583 (Chief, Policy and Rules Div. 1987).

Dutton is located approximately 32 miles north-northwest of Great Falls, Montana.² Dutton is located in Teton County; Great Falls, in Cascade County. Great Falls has a Census Bureau-designated Urbanized Area. Operating with its presently authorized facilities, KBJF, as a Shelby station, would place a 70 dBu signal over 50% or more of that Urbanized Area. Since the proposed change in KBJF's community of license to Dutton, Montana, does not necessarily entail a change in the station's service area, a so-called "Tuck analysis" is not required under the circumstances.³ E.g., Georgetown and Garden City, South Carolina, 12 FCC Rcd 13394 (¶4) (Chief, Allocations Branch 1997); Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (¶4) (Chief, Allocations Branch 1996).

Nevertheless, a Tuck analysis would confirm that Dutton is not a suburb of Great Falls and is sufficiently independent of Great Falls to merit a first local service preference. Under Tuck, the Commission considers evidence under three factors to determine whether a suburban

² The population of Great Falls is 55,125 (1990 Census).

³ See Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

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community deserves a first local service preference: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city.

Here, since the change in allotment from Shelby to Dutton will not necessarily require a change in station facilities, a comparison between the populations to receive coverage is not meaningful. With respect to the second factor, while Dutton is far smaller than Great Falls, it is located a considerable distance, 32 miles, from that community. Nearly all of that distance is open country with little development. Clearly, Dutton cannot be considered a suburb of Great Falls.

With respect to the third factor, the interdependence of the “suburban” community and the central city, the Commission typically considers the following eight characteristics:

- (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community;
- (2) whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests;
- (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;
- (4) whether the specified community has its own local government and elected officials;

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- (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code;
- (6) whether the community has its own commercial establishments, health facilities, and transportation systems;
- (7) the extent to which the specified community and the central city are part of the same advertising market; and
- (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

3 FCC Rcd at 5378. In this case, the facts falling into these eight categories demonstrate the Dutton is unquestionably independent of Great Falls:

1. Commuting. According to the 1990 U.S. Census Bureau data, only eight residents of Dutton commute to work in Great Falls. The vast majority of Dutton residents work in Dutton itself or in Teton county in which Dutton is situated.

2. Local Media. Dutton is served by a local weekly newspaper, The Dutton Dispatch.

3. Community Perception. Bob Danwalder, a member of the Dutton City Council, confirmed in an interview with SMA's counsel that the community's leaders and residents view Dutton separate from Great Falls. Similar views were voiced by Bonnie Powell, who works at the Dutton Post Office.

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4. City Government. Dutton elects its own mayor and city counsel.

5. Telephone Book and Zip Code. Dutton has its own U.S. Post Office and zip code, 59433.

6. Commercial Establishment. Dutton has numerous commercial and civic establishments. Among the businesses located in Dutton are: Dutton State Bank, Dutton Farmers' Elevator Company, Dutton Insurance Associates, Inc., Café Dutton, Campbell Aviation, Mountain View Co-Op, Becker Insurance, A&P Motors, Inc., Ace's High Tavern, Boyd's Body Shop, Mike's Club Tavern, George's Welding and Repair, Hugh Greyn & Sons Fertilizer Supply and Johnson's Conoco Service Station. The community has three churches, Catholic, Methodist and Lutheran, and a retirement facility, the Sunset Trail Lodge. Dutton also has an American Legion Hall.

7. Advertising. Local businesses advertise primarily in The Dutton Dispatch and only occasionally in Great Falls media, according to Mr. Danwalder.

8. Municipal Services. Dutton has its own fire department and town office building. The fire department is staffed by volunteers and is fully equipped. Police services are provided by a resident Teton County deputy sheriff, under a contract between the city and the county. The

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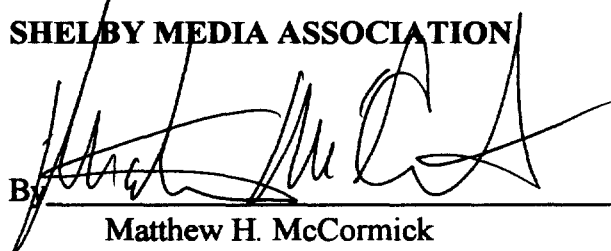
community has an elementary school, a high school, an excellent library, a swimming pool and a well-maintained baseball and recreation complex. Dutton also has its own water and sewer system.

The facts, in sum, demonstrate that Dutton is clearly independent of Great Falls and entitled to a first community service preference.

WHEREFORE, in light of all circumstance present, SMA urges the Commission to **ADOPT** the following changes in the FM Table of Allotments, Section 73.202(b) of the Commission's Rules:

<u>Community</u>	<u>Present Channel</u>	<u>Proposed Channel</u>
Shelby, Montana	242C1, 250C	242C1
Dutton, Montana	-----	250C

SHELBY MEDIA ASSOCIATION

By 
Matthew H. McCormick
Its Counsel

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October 29, 1998

DECLARATION

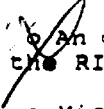
I, Lyle Robert Evans, hereby declare under penalty of perjury the following:

- 1) I have prepared the attached coverage map of the construction permit for, Shelby, Montana.**
- 2) The map accurately depicts the coverage of that station from its current transmitter site. As shown on the map, the station places a "City Grade" signal over the entire community of Dutton.**
- 3) The foregoing is true and correct to the best of my knowledge and belief.**
- 4) I am an Electronic Communications Technical Consultant with offices at 2450 Crooks Avenue, Kaukauna, Wisconsin, 54130. I have prepared numerous AM, FM, Microwave Radio, Television and Translator Applications to grant by the Federal Communications Commission. My qualifications as an expert in Electronic Communications Engineering are a matter of record with the Federal Communications Commission.**

**LYLE ROBERT EVANS,
Technical Consultant to:
Shelby Media Association
September 20, 1998**

DOCUMENT OFF-LINE

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